



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



STATE v. SHAWN GRELL, CR-01-0275-AP

PARTIES AND COUNSEL:

Appellant: Shawn Grell, represented by James R. Rummage, Deputy Maricopa County Public Defender.

Appellee: State of Arizona, represented by Amy Pignatella Cain, Assistant Attorney General.

FACTS:

Shawn Grell was found guilty of killing his two-year-old daughter Kristin in December 1999 by dousing her with gasoline and setting her on fire. He was convicted of first degree murder following a trial by submission of stipulated documents in 2000.

At the aggravation and mitigation hearing in June 2001, the trial court found three aggravating factors: a previous conviction of a serious crime; victim under the age of 15; and a manner of killing that was cruel, heinous or depraved. The court also heard evidence of Grell's brain damage and mental retardation. The judge found that Grell was not retarded or impaired, and that other mitigation was not sufficiently substantial to warrant leniency, and thus sentenced him to death.

While this case was pending on direct appeal, the U.S. Supreme Court decided *Ring v. Arizona*, holding that a jury must determine the existence of aggravating factors before the death penalty is imposed. The Court also decided *Atkins v. Virginia*, banning execution of the mentally retarded. This court addressed Grell's trial issues then remanded the case for a specific finding on the issue of mental retardation.

On remand, the parties argued the same testimony and evidence that was used at the original mitigation hearing. Pursuant to a new statute being used as guidance, A.R.S. § 13-703.02, Grell bore the burden to prove retardation by clear and convincing evidence. Following arguments, the trial court found that Grell was not mentally retarded. The case was returned to this court to consider both issues arising from the retardation hearing, and whether Grell is entitled to a resentencing by a jury under *Ring*.

ISSUES:

1. Did the trial court err in requiring Grell to bear the burden of proof by clear and convincing evidence in the mental retardation hearing?
2. Did the trial court properly preclude testimony from Grell's expert witness because of Grell's refusal to cooperate with the State's expert?

3. Did the trial court properly allow testimony from Dr. Scialli on the issue of mental retardation?
4. Did the trial court err in not finding that Grell is mentally retarded?
5. Is Grell entitled to jury sentencing?

Definitions: “Mental retardation” means a condition based on a mental deficit that involves significantly subaverage general intellectual functioning, existing concurrently with significant impairment in adaptive behavior, where the onset of the foregoing conditions occurred before the defendant reached the age of eighteen. A.R.S. § 13-703.02. This definition is adapted from the definitions used by the American Association of Mental Retardation and the American Psychiatric Association and quoted by the U.S. Supreme Court in *Atkins v. Virginia*.

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